IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 2505 of 2005

Date of Decision: 23.11.2006

Const. Narinder Singh .... Petitioner

Versus

The State of Punjab and others. ... Respondents

CORAM : HON'BLE MR. JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. Malkeet Singh, Advocate,
for the petitioner.

Mr. B.S. Chahal, Assistant Advocate General, Punjab,
for the respondents.

J.S. Khehar, J. (Oral)

While the petitioner was holding the post of Constable, he was involved in a criminal case on the basis of the registration of First Information Report bearing No. 305 dated 30.10.1997, registered at Police Station East, Chandigarh, having committed an offence under Section 379 of the Indian Penal Code. Consequent upon the conclusion of the trial conducted against the petitioner, he was found guilty and was convicted by the Judicial Magistrate 1st Class, Chandigarh, vide judgment/order dated 16.05.1996, whereby he was awarded rigorous imprisonment for a period of one year and a fine of Rs.500/-, with a further stipulation that in default of payment of fine, he would further undergo simple imprisonment for a period of one month.

On account of the aforestated conviction of the petitioner, he was dismissed from service by an order dated 16.05.1996 under the provisions of Rule 16.2(2) of the Punjab Police Rules, 1934.

The petitioner challenged the order of his conviction dated 16.05.1996, by preferring an appeal. The appeal preferred by the petitioner was accepted by the Additional Sessions Judge, Chandigarh on 10.03.1999 (Annexure P/1). Consequent upon the acquittal of the petitioner, the petitioner was reinstated into service by the Senior Superintendent of Police, Tarn Taran, vide order dated 31.05.2000.

It is apparent from the sequence of facts narrated above, that the petitioner remained out of service from 16.5.1996 to 30.05.2000. Through the instant writ petition, the petitioner claims the wages for the period from 16.5.1996 to 30.05.2000. In order to claim the aforestated wages, learned counsel for the petitioner has placed reliance on Rule 16.3(2) of the Punjab Police Rules, 1934. The aforesaid rule extracted in the writ petition, is being reproduced hereunder:-

> "Rule 16.3 – Action following on a judicial acquittal – (1) when a Police Officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, unless:-
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> a) the criminal charge has failed on technical grounds; or
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> b) in the opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over; or
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> c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the Police Officer concerned; or
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> d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or
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> e) additional evidence admissible under rule 16.25(i) in departmental proceedings is available.
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> 2) Departmental proceedings admissible under Sub Rule (i)

> may be instituted against Lower Subordinates by the order of the Superintendent of Police, but may be taken against Upper Subordinate only with the sanction of the Deputy Inspector General of Police, and a Police Officer against whom such action is admissible shall not be deemed to have been honourably acquitted for the purpose of Rule 7.3 of the Civil Services Rules (Punjab), Volume I Part I."

As against the aforesaid contention of the learned counsel for the petitioner, learned counsel for the respondents has placed reliance on the decision rendered by the Apex Court in Ranchhodji Chaturji Thakore versus Superintending Engineer, Gujarat Electricity Board, Himmatnagar, Gujarat, AIR 1997, S.C., 1802, as well as, the decision rendered by the Supreme Court recently in Union of India and others versus Jai Pal Singh, AIR 2004, S.C., 1005. It was held in both the aforesaid judgments, in similar circumstances as the one arising in this case, that an employee, whose services had been dispensed with on account of conviction in a criminal case, is not entitled to back wages, as no fault can be found with his employer for having dispensed with his services.

In view of the above, we are of the view that the petitioner is not entitled to back wages as claimed by him. Even on a perusal of the rule relied upon by the learned counsel for the petitioner, it is not possible for us to arrive at a conclusion, that in the facts and circumstances of this case, the petitioner is entitled to back wages.

Dismissed.

(J.S. Khehar)
Judge

November 23, 2006 (S.D. Anand)
vkd Judge